



The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**



**Thomas S. Burack, Commissioner**

Representative James Phinizy, Chairman  
Environment and Agriculture Committee  
Legislative Office Building, Room 303  
Concord, NH 03301

**SUBJECT: House Bill 1401- An Act Adopting the Unified Environmental Covenants Act**

Dear Chairman Phinizy and Members of the Committee:

Thank you for the opportunity to provide testimony about House Bill 1401-FN. This legislation adopts the Uniform Environmental Covenants Act, which was developed by the National Conference of Commissioners on Uniform State Laws. The Department of Environmental Services (Department) believes that further study of this proposal is warranted, and does not currently support the bill.

The Department has conducted an initial review of the content and history of the Uniform Environmental Covenants Acts, also known as UECA. This act was developed by the National Conference of Commissioners on Uniform State Laws (NCCUSL) from 2000 to 2003, and was reviewed and approved by the American Bar Association in 2004. States began introducing legislation to adopt UECA starting in 2005. As of March 2007, it has been enacted in thirteen states. The intent of UECA is to provide property-based land use controls (environmental covenants) that complement existing state programs involved with the remediation and reuse of contaminated properties. UECA incorporates principles of real property law and environmental law.

The Department has attended several presentations on UECA, and through interstate organizations has participated in discussions with environmental agency staff from states that have adopted the law. Some states have had a positive experience with UECA. However, agency staff from other states have expressed concerns that implementation of UECA is cumbersome and can negatively affect the timeliness of site cleanup and related property transactions. The Department believes that it needs to better understand how UECA may affect the clean up of contaminated sites in New Hampshire before it can support this bill.

New Hampshire has enjoyed great success working cooperatively with municipalities and the business, real estate, legal and environmental communities on the cleanup and revitalization of contaminated properties. This success is due in large part to all parties having a clear understanding of the risk-based site remediation process that the Department has implemented, and working together to develop approaches that are protective, practical, and cost effective. Pursuant to authority granted under RSA 147-F, the Department can approve cleanup plans for sites that include imposing activity and use restrictions (AURs) on a portion of a property or on an entire property in order to manage the exposure risk associated with contaminated soils. AURs generally include imposing engineering controls (such as construction of a cap or soil cover) and restrictions on future property use. AURs are designed to be enforceable as conservation restrictions under RSA 477:45-46 and have been an effective tool over the past 10 years. Adoption of UECA could result in significant changes to this established remediation

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framework, which could potentially have an adverse impact on the success and efficacy of our Brownfields program.

The Department recommends that UECA and its potential impact on New Hampshire's remediation process be studied further by the Department, the Department of Justice and a representative group of stakeholders who would be affected by remedial action decisions. The Department would also seek additional information from representatives of NCCUSL. While this may require additional time, the Department believes that more study and input from stakeholders are warranted, in order to make a well-informed decision.

If you have any questions regarding this letter of testimony, please contact Michael Wimsatt, Waste Management Division Director, at 271-2905.

Sincerely,



Thomas Burack  
Commissioner

cc: Bill Sponsors  
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